

AMENDED IN ASSEMBLY AUGUST 23, 2004

AMENDED IN ASSEMBLY MAY 27, 2004

**SENATE BILL**

**No. 1564**

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**Introduced by ~~Committee on Judiciary (Senators Escutia~~  
~~(Chair), Cedillo, Ducheny, Kuehl, and Sher)~~ Senator Escutia**

February 19, 2004

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An act to ~~amend Section 3440.1 of the Civil Code, relating to~~  
~~fraudulent transfers;~~ *add Section 678.3 to the Insurance Code, relating*  
*to homeowners' insurance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1564, as amended, ~~Committee on Judiciary~~  
~~Escutia. Fraudulent transfers: personal property~~ *Homeowners'*  
*insurance: claims.*

*Existing law generally regulates homeowners' insurance. Existing law requires that a notice of nonrenewal of a homeowners' policy contain specified information, including the reason or reasons for the nonrenewal.*

*This bill would prohibit an insurer from refusing to renew a homeowners' policy on the basis of specified claims filed by the insured. It would specify claims with respect to which this prohibition would not apply.*

~~Existing law, the Uniform Fraudulent Transfer Act, provides generally that a transfer of personal property not accompanied by delivery and change of possession is void against the transferor's creditors. Existing law, however, also exempts from that rule any of a list of specific types of transfers.~~

~~This bill would additionally exempt from that rule any transfer of property by any governmental entity.~~

~~The bill would incorporate additional changes in Section 3440.1 of the Civil Code proposed by SB 772, that would become operative only if this bill and SB 772 are both chaptered and become effective and this bill is chaptered last.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 3440.1 of the Civil Code is amended to~~  
2     ~~SECTION 1. Section 678.3 is added to the Insurance Code, to~~  
3     ~~read:~~  
4     ~~678.3. (a) This section shall apply to policies of residential~~  
5     ~~property insurance covering the risks specified in Section 675.~~  
6     ~~(b) An insurer shall not refuse to renew a policy on the basis of~~  
7     ~~any of the following claims:~~  
8     ~~(1) Claims resulting from a loss due to natural causes,~~  
9     ~~including, but not limited to, floods, earthquakes, lightning, and~~  
10    ~~any weather-related event in which the loss is not the result of~~  
11    ~~negligence by the insured.~~  
12    ~~(2) Claims resulting from fire losses in which the property of~~  
13    ~~the insured was not the inception point of the fire and the loss was~~  
14    ~~caused by a disaster, as defined in subdivision (b) of Section~~  
15    ~~1689.14 of the Civil Code.~~  
16    ~~(c) Notwithstanding subdivision (b), an insurer may refuse to~~  
17    ~~renew a policy on the basis of either of the following:~~  
18    ~~(1) Any claim involving fraud by the insured.~~  
19    ~~(2) Any claim involving the deliberate acts of the insured.~~  
20    ~~read:~~  
21    ~~3440.1. This chapter does not apply to any of the following:~~  
22    ~~(a) Things in action.~~  
23    ~~(b) Ships or cargoes if either are at sea or in a foreign port.~~  
24    ~~(c) The sale of accounts, chattel paper, payment intangibles, or~~  
25    ~~promissory notes governed by the Uniform Commercial Code,~~  
26    ~~security interests, and contracts of bottomry or respondentia.~~  
27    ~~(d) Wines or brandies in the wineries, distilleries, or wine~~  
28    ~~cellars of the makers or owners of the wines or brandies, or other~~  
29    ~~persons having possession, care, and control of the wines or~~

1 ~~brandies, and the pipes, casks, and tanks in which the wines or~~  
2 ~~brandies are contained, if the transfers are made in writing and~~  
3 ~~executed and acknowledged, and if the transfers are recorded in the~~  
4 ~~book of official records in the office of the county recorder of the~~  
5 ~~county in which the wines, brandies, pipes, casks, and tanks are~~  
6 ~~situated.~~

7 ~~(e) A transfer or assignment made for the benefit of creditors~~  
8 ~~generally or by any assignee acting under an assignment for the~~  
9 ~~benefit of creditors generally.~~

10 ~~(f) Property exempt from enforcement of a money judgment.~~

11 ~~(g) Standing timber.~~

12 ~~(h) Subject to the limitations in Section 3440.3, a transfer of~~  
13 ~~personal property if all of the following conditions are satisfied:~~

14 ~~(1) Prior to the date of the intended transfer, the transferor or~~  
15 ~~the transferee files a financing statement, with respect to the~~  
16 ~~property transferred, signed by the transferor. The financing~~  
17 ~~statement shall be filed in the office of the Secretary of State in~~  
18 ~~accordance with Chapter 5 (commencing with Section 9501) of~~  
19 ~~Division 9 of the Commercial Code, but may use the terms~~  
20 ~~“transferor” in lieu of “debtor” and “transferee” in lieu of~~  
21 ~~“secured party.” The provisions of Chapter 5 (commencing with~~  
22 ~~Section 9501) of Division 9 of the Commercial Code shall apply~~  
23 ~~as appropriate to the financing statement.~~

24 ~~(2) The transferor or the transferee publishes a notice of the~~  
25 ~~intended transfer one time in a newspaper of general circulation~~  
26 ~~published in the judicial district in which the personal property is~~  
27 ~~located, if there is one, and if there is none in the judicial district,~~  
28 ~~then in a newspaper of general circulation in the county embracing~~  
29 ~~the judicial district. The publication shall be completed not less~~  
30 ~~than 10 days before the date the transfer occurs. The notice shall~~  
31 ~~contain the name and address of the transferor and transferee and~~  
32 ~~a general statement of the character of the personal property~~  
33 ~~intended to be transferred, and shall indicate the place where the~~  
34 ~~personal property is located and a date on or after which the~~  
35 ~~transfer is to be made.~~

36 ~~(i) Personal property not located within this state at the time of~~  
37 ~~the transfer or attachment of the lien if the provisions of this~~  
38 ~~subdivision are not used for the purpose of evading this chapter.~~

39 ~~(j) A transfer of property that (1) is subject to a statute or treaty~~  
40 ~~of the United States or a statute of this state that provides for the~~

1 registration of transfers of title or issuance of certificates of title  
2 and (2) is so far perfected under that statute or treaty that a bona  
3 fide purchaser cannot acquire an interest in the property  
4 transferred that is superior to the interest of the transferee.

5 (k) A transfer of personal property in connection with a  
6 transaction in which the property is immediately thereafter leased  
7 by the transferor from the transferee provided the transferee  
8 purchased the property for value and in good faith (subdivision (e)  
9 of Section 10308 of the Commercial Code).

10 (l) Transition property, as defined in Section 840 of the Public  
11 Utilities Code.

12 (m) A transfer of property by any governmental entity.

13 SEC. 1.5. Section 3440.1 of the Civil Code is amended to  
14 read:

15 3440.1. This chapter does not apply to any of the following:

16 (a) Things in action.

17 (b) Ships or cargoes if either are at sea or in a foreign port.

18 (c) The sale of accounts, chattel paper, payment intangibles, or  
19 promissory notes governed by the Uniform Commercial Code,  
20 security interests, and contracts of bottomry or respondentia.

21 (d) Wines or brandies in the wineries, distilleries, or wine  
22 cellars of the makers or owners of the wines or brandies, or other  
23 persons having possession, care, and control of the wines or  
24 brandies, and the pipes, casks, and tanks in which the wines or  
25 brandies are contained, if the transfers are made in writing and  
26 executed and acknowledged, and if the transfers are recorded in the  
27 book of official records in the office of the county recorder of the  
28 county in which the wines, brandies, pipes, casks, and tanks are  
29 situated.

30 (e) A transfer or assignment made for the benefit of creditors  
31 generally or by any assignee acting under an assignment for the  
32 benefit of creditors generally.

33 (f) Property exempt from enforcement of a money judgment.

34 (g) Standing timber.

35 (h) Subject to the limitations in Section 3440.3, a transfer of  
36 personal property if all of the following conditions are satisfied:

37 (1) Prior to the date of the intended transfer, the transferor or  
38 the transferee files a financing statement, with respect to the  
39 property transferred, signed by the transferor. The financing  
40 statement shall be filed in the office of the Secretary of State in

1 accordance with Chapter 5 (commencing with Section 9501) of  
2 Division 9 of the Commercial Code, but may use the terms  
3 “transferor” in lieu of “debtor” and “transferee” in lieu of  
4 “secured party.” The provisions of Chapter 5 (commencing with  
5 Section 9501) of Division 9 of the Commercial Code shall apply  
6 as appropriate to the financing statement.

7 (2) ~~The transferor or the transferee publishes a notice of the~~  
8 ~~intended transfer one time in a newspaper of general circulation~~  
9 ~~published in the judicial district in which the personal property is~~  
10 ~~located, if there is one, and if there is none in the judicial district,~~  
11 ~~then in a newspaper of general circulation in the county embracing~~  
12 ~~the judicial district. The publication shall be completed not less~~  
13 ~~than 10 days before the date the transfer occurs. The notice shall~~  
14 ~~contain the name and address of the transferor and transferee and~~  
15 ~~a general statement of the character of the personal property~~  
16 ~~intended to be transferred, and shall indicate the place where the~~  
17 ~~personal property is located and a date on or after which the~~  
18 ~~transfer is to be made.~~

19 (i) ~~Personal property not located within this state at the time of~~  
20 ~~the transfer or attachment of the lien if the provisions of this~~  
21 ~~subdivision are not used for the purpose of evading this chapter.~~

22 (j) ~~A transfer of property which (1) is subject to a statute or~~  
23 ~~treaty of the United States or a statute of this state that provides for~~  
24 ~~the registration of transfers of title or issuance of certificates of title~~  
25 ~~and (2) is so far perfected under that statute or treaty that a bona~~  
26 ~~fide purchaser cannot acquire an interest in the property~~  
27 ~~transferred that is superior to the interest of the transferee.~~

28 (k) ~~A transfer of personal property in connection with a~~  
29 ~~transaction in which the property is immediately thereafter leased~~  
30 ~~by the transferor from the transferee provided the transferee~~  
31 ~~purchased the property for value and in good faith (subdivision (e)~~  
32 ~~of Section 10308 of the Commercial Code).~~

33 (l) ~~Transition property, as defined in Section 840 of the Public~~  
34 ~~Utilities Code, or recovery property, as defined in Section 848 of~~  
35 ~~the Public Utilities Code.~~

36 (m) ~~A transfer of property by any governmental entity.~~

37 SEC. 2. ~~Section 1.5 of this bill incorporates amendments to~~  
38 ~~Section 3440.1 of the Civil Code proposed by this bill and SB 772.~~  
39 ~~It shall only become operative if (1) both bills are enacted and~~  
40 ~~become effective on or before January 1, 2005, (2) each bill~~

1 ~~amends Section 3440.1 of the Civil Code, and (3) this bill is~~  
2 ~~enacted after SB 772, in which case Section 3440.1 of the Civil~~  
3 ~~Code, as amended by SB 772, shall remain operative only until the~~  
4 ~~operative date of this bill, at which time Section 1.5 of this bill shall~~  
5 ~~become operative, and Section 1 of this bill shall not become~~  
6 ~~operative.~~

